

Number: 2002 - 05
Date: May 23, 2002

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Subject: **TIME STANDARDS FOR PROCESSING LEGAL NOTICES OF VIOLATIONS OF THE STATE BUILDING CODE.**

Purpose: Establishing Time Standards For Prosecution Of Legal Notices Of Violations Issued By The Inspectional Services Department Pursuant To Its Legal Authority Under G.L.c.143 For Administering 780 CMR (the "State Building Code") In the City of Boston.

Determinations:

1. It is the policy of the Inspectional Services Department to administer the laws, regulations and rules it is legally obligated to administer in a fair and judicious way. Members of the Department are expected to exercise proper care and due diligence and act in a manner which comports with the legal due process requirements of state and federal constitutions at all times.
2. In furtherance of this policy it becomes both necessary and appropriate to adopt and publish uniform time standards for employees to follow when they are determining whether to seek a complaint in court to enforce any law, regulation, or rule that the Inspectional Services Department is legally obligated to enforce.

Note:

For the purpose of clarity and brevity, the pronouns "He" and "His" are used editorially throughout this rule and it should be understood that where used they are to be interpreted as applying to both male and female employees.

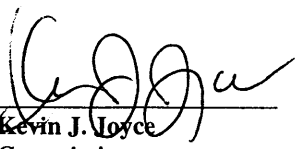
Time Standards

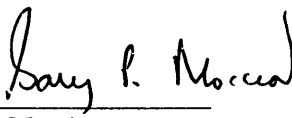
1. G.L.c. 143 regulates buildings and structures in the Commonwealth of Massachusetts and authorizes the promulgation of the state building code (780 CMR). Among other things, the state building code provides minimum safety standards for buildings and structures and a legal process for prosecuting violations of the state building code when buildings and structures are found out of compliance with the requirements of the state building code.
2. By law, G.L.c. 143 and 780 CMR are administered in Boston by the Inspector of Buildings through the Inspectional Services Department. In order to comply with the due process requirements contained in G.L.c. 143 and 780 CMR for the prosecution of violations of the state building code it is the policy of the Inspectional Services Department that all of its employees shall strictly comply with the time standards set forth in this bulletin.
3. It is the duty of the local inspector to exercise due care, diligence and professional judgement at all times when discharging his/her official duties.

4. It is the duty of the Local Inspector to determine whether there is cause for complaint under the applicable provisions of 780 CMR (the state building code) and to issue a legal notice of violation to the person in control of the subject property, if it is determined that cause for issuing a violation exists.
5. Once a written legal notice of violation has issued, it is the duty of the local inspector who caused the legal notice of violation to issue, to timely re-inspect the subject property and determine if the legal notice of violation has been complied with in accordance with the terms and time periods specified in the legal notice of violation.
6. If the Local Inspector determines the cause underlying the issuance of the legal notice of violation is corrected, it is the duty of the local inspector to inform the Inspector of Buildings in writing that the legal notice of violation is corrected and that no further legal action by the Inspectional Services Department is warranted.
7. If the Local Inspector determines that the cause underlying the issuance of the legal notice of violation is not corrected, then it is the duty of the local inspector to inform the Inspector of Buildings in writing that it is the local inspector's determination that legal proceedings should be initiated to obtain compliance with the state building code as specified in the legal notice of violation. If he concurs with the local inspector's determination, then the Inspector of Buildings shall forward the matter to the Office of Investigations and Regulatory Enforcement for prosecution.
8. The Local Inspector shall have a period of sixty days from the compliance date (date of service) specified in the legal notice of violation to notify the Inspector of Buildings in writing that the legal notice of violation has either (1) been resolved or (2) should be brought forward to legal proceedings. If the local inspector fails to provide such notification to the Inspector of Buildings within this sixty-day period, then the legal notice of violation shall be dismissed sua sponte by the Inspectional Services Department for lack of prosecution. Repeated dismissals for lack of prosecution and/or failure to timely provide the Inspector of Buildings with the written notices specified in this bulletin could lead to disciplinary action of the Local Inspector.
9. After the effective date of this bulletin, no application for complaint shall be sworn out for prosecution after a period of 60 days has elapsed from the date of service of the legal notice of violation unless the Local Inspector certifies in writing the reason why he is seeking to bring the matter forward for prosecution after the expiration of the 60-day period.
10. It is the duty of each Local Inspector to keep accurate and complete written records of all legal notices of violation issued by the Local Inspector and to keep the Inspector of Buildings appropriately informed of the status and substance of each pending legal notice of violation issued by the Local Inspector. Local Inspectors are encouraged to keep private records of their work, noting all matters of importance in which they are engaged in their official capacity.

11. It is the duty of each Local Inspector to coordinate the efficient assignment of pending legal notices of violation (open court cases) when routinely being transferred from ward to ward or to other duty stations in the Inspectional Services Department. It is the further duty of the Local Inspector upon re-assignment to review all open violations transferred to the Local Inspector upon re-assignment and to further re-inspect the buildings and conditions giving rise to such open violations before requesting that such open violations be brought forward for prosecution.
12. Beginning on July 1, 2002 and until October 31, 2002 there shall be a grace period within which Local Inspectors are to review all outstanding legal notices of violation in their assigned wards and determine their validity. Any outstanding legal notice of violation which is not brought forward by the Local Inspector in accordance with the time standards contained in this bulletin prior to October 31, 2002 shall be dismissed by the Inspectional Services Department for lack of prosecution.
13. The practice of the automatic "swear out" of legal notices for violations of the state building code is abolished. Henceforth all so called "swear out" of violations shall be administered solely by the Office of Investigations and Regulatory Enforcement (formerly the Legal Division) on a case by case basis or as may be further determined by the Inspector of Buildings.
14. Nothing contained in this bulletin shall effect the immediate prosecution of emergency violations or have implications for any required response to emergency incidents and/or emergency inspections undertaken in accordance with public safety provisions of the state building code or any other regulation or at the direction of the incident commander on the scene of a critical incident or under emergency conditions.
15. Failure to comply with the time standards contained in this bulletin could lead to disciplinary action.
16. This bulletin is effective immediately and shall remain in force until it is amended or revoked in writing.

Signed:


Kevin J. Joyce
Commissioner
Inspectional Service Department


Gary P. Moccia
Inspector of Building
Inspectional Service Department

Date: 5.23.02

Date: